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FILED

FEB 19 2016

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA ex rel.
RELATOR DOE,

Plaintiff,

v.

CONVERGENT CAPITAL PARTNERS II,
L.P., CONVERGENT CAPITAL
PARTNERS, III, L.P., and TAVANT
TECHNOLOGIES, INC.,

Defendants.

CASE NO. C 15-2774 PSG

**UNITED STATES' NOTICE OF
ELECTION TO DECLINE
INTERVENTION; ~~PROPOSED~~
ORDER TO UNSEAL**

FILED UNDER SEAL

1 Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies
2 the Court of its decision not to intervene in this action.

3 Although the United States declines to intervene, it respectfully refers the Court to 31
4 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United
5 States; providing, however, that the “action may be dismissed only if the court and the Attorney
6 General give written consent to the dismissal and their reasons for consenting.” *Id.* The United
7 States Court of Appeals for the Ninth Circuit has held that, notwithstanding this language, the
8 United States only has the right to a hearing when it objects to a settlement or dismissal of the
9 action. *U.S. ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel.*
10 *Killingsworth v. Northrop Corp.*, 25 F.3d 715, 723-25 (9th Cir. 1994). Therefore, the United
11 States requests that, should either the relator or the defendants propose that this action be
12 dismissed, settled, or otherwise discontinued, this Court provide the United States with notice
13 and an opportunity to be heard before ruling or granting its approval.

14 Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all
15 pleadings filed in this action be served upon the United States. The United States also requests
16 that orders issued by the Court be sent to the government's counsel. The United States reserves
17 its rights to order any deposition transcripts and to intervene in this action, for good cause, at a
18 later date, and to seek dismissal of the relator's action or claim. See 31 U.S.C. § 3730(c)(2), (3).
19 The United States also requests that it be served with all notices of appeal.

20 Finally, the United States requests that the Court unseal: (1) relator's Complaint; (2) the
21 summons, if any; (3) the scheduling order; (4) this Notice of Election to Decline Intervention,
22 with (Proposed) Order to Unseal; and (5) all other matters occurring in this action after the date
23 the Court enters the unsealing order. The United States requests that all other contents of the
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1 Court's file in this matter (including, but not limited to, any applications filed by the United
2 States for extensions of the sixty-day investigative period, any applications for partial lifting of
3 the seal, and any orders previously entered in this matter) remain under seal and not be made
4 public or served upon defendants.

5 Respectfully submitted,

6 BRIAN J. STRETCH

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8 Dated: February 18, 2016

By:


JONATHAN U. LEE

9 Assistant United States Attorney
10 Attorneys for the United States of America
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~~PROPOSED~~ ORDER TO UNSEAL

The United States having declined to intervene in this action pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), IT IS HEREBY ORDERED that:

1. The Complaint, the summons, the scheduling order, this Order, and the accompanying United States' Notice of Election to Decline Intervention are hereby unsealed.

2. The relator shall serve the Complaint on defendants.

3. Any applications and/or declarations that have been filed under seal by the United States for an extension of the sixty-day investigative period or for any other reason shall remain under seal and not be made public or served upon the defendants.

4. The seal shall be lifted as to all other matters occurring in this action after the date of this Order.

5. The parties shall serve all pleadings and motions filed in this action, including supporting memoranda, upon the United States, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time.

6. The parties shall serve all notices of appeal upon the United States.

7. All orders of this Court shall be sent to the United States.

8. Should the relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with notice and an opportunity to be heard before ruling or granting its approval.

IT IS SO ORDERED.

Dated: February 23, 2016


Hon. PAUL S. GREWAL
United States Magistrate Judge